

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF BAKER EQUIPMENT  
AND MATERIALS, LTD., NOTICE OF  
APPARENT VIOLATION AND INTENT TO  
ASSESS FORFEITURE.

CASE NO. 20-805-TR-CVF  
(OH3203300600C)

## OPINON AND ORDER

Entered in the Journal on September 23, 2021

### I. SUMMARY

{¶ 1} The Commission finds that Staff has demonstrated, in part, by a preponderance of the evidence, that Respondent Baker Equipment and Materials, Ltd. violated the Commission's transportation regulations.

### II. PROCEDURAL HISTORY

{¶ 2} On March 18, 2020, Staff served a notice of apparent violation and intent to assess forfeiture upon Baker Equipment and Materials, Ltd. (Respondent) in accordance with Ohio Adm.Code 4901:2-7-07, alleging a violation of the Commission's transportation regulations.

{¶ 3} On April 14, 2020, the Commission received a request for administrative hearing from Rob Woods on behalf of Respondent in accordance with Ohio Adm.Code 4901:2-7-13.

{¶ 4} Pursuant to Ohio Adm.Code 4901:2-7-16(B), by Entry dated May 13, 2020, the attorney examiner instructed the parties to participate in a prehearing conference on June 18, 2020. During the prehearing conference, the parties were unable to settle the matter.

{¶ 5} By Entry dated July 2, 2020, the attorney examiner set this case for hearing on August 26, 2020. However, the COVID-19 pandemic resulted in the hearing ultimately being postponed until June 29, 2021, when it was conducted using virtual hearing technology.

{¶ 6} At the hearing on June 29, 2021, Staff witnesses Aaron Lockhart and Rob Moser testified in support of the violations identified by Staff. Rob Woods testified on behalf of Respondent.

### III. LAW

{¶ 7} R.C. 4923.04 provides that the Commission shall adopt rules applicable to the transportation of persons or property by motor carriers operating in interstate and intrastate commerce. Pursuant to Ohio Adm.Code 4901:2-5-03(A), the Commission has adopted several provisions of the Federal Motor Carrier Safety Regulations (FMCSR), including 49 C.F.R. Sections 390-397, for the purpose of governing transportation by motor vehicle in the state of Ohio. Further, R.C. 4923.99 authorizes the Commission to assess a civil forfeiture of up to \$25,000 per day, per violation, against any person who violates the safety rules adopted by the Commission. Ohio Adm.Code 4901:2-7-20 requires that, at the hearing, Staff prove the occurrence of a violation by a preponderance of the evidence.

### IV. ISSUE

{¶ 8} At issue is whether Staff has satisfied its burden to show, by a preponderance of the evidence, that Respondent violated the following regulations: 49 C.F.R. 393.75(a)(3), 393.47(e), 393.53(b), and 396.3(a)(1). Respondent disputes that its vehicle was, at the time of inspection, in violation of 49 C.F.R. 393.75(a)(3) (tire flat), 393.47(e) (clamp or roto type brake out-of-adjustment), 393.53(b) (commercial motor vehicle manufactured after 10/1/94 with an automatic airbrake adjustment system that fails to compensate for wear), and 396.3(a)(1) (brakes out of service due to at least 20 percent of the service brakes being defective). *See*, Staff Ex. 1. Respondent claims that Staff's violation determinations were in error because (1) as to the vehicle's brakes, Staff misidentified the type of brakes that were on the vehicle, which resulted in the wrong performance measure being employed, and (2) as to the alleged flat tire, there was an inaccurate field measurement. Staff argues that it properly evaluated the brakes, as well as the level of tire inflation, when it conducted the inspection.

## V. SUMMARY OF EVIDENCE

### A. *Staff's Arguments*

{¶ 9} Aaron Lockhart (Inspector Lockhart) testified as to his inspection of the vehicle on January 27, 2020. Inspector Lockhart is a Hazardous Materials Specialist 2, who has been employed by the Commission for seven years. Prior to joining the Commission, he worked as an over-the-road truck driver for ten years. In his role, he conducts a minimum of 320 roadside inspections per year. (Tr. at 9-11.)

{¶ 10} Inspector Lockhart testified that he performed a Level 1 inspection on the vehicle that lasted one hour and twenty-two minutes (Tr. 13, 16). As part of his inspection, he kicked each vehicle tire, noticing that the right inside tire on axle two appeared to be flat. Consistent with his normal protocol, he had the driver check the tire pressure using a gauge in order to guard against any claims that the inspector tampered with the tire's inflation. Further, once the driver confirmed the tire pressure using the gauge (in this circumstance, the driver purportedly took three measurements), Inspector Lockhart also took a gauge measurement. Each of the measurements was confirmed at 40 percent, which is below the 50 percent threshold required to find a flat tire violation. (Tr. at 16-18.)

{¶ 11} Inspector Lockhart also described the manner in which his inspection determined the five brake violations that he cited. Initially, the inspector marked a baseline location of the brake chambers for the slack adjuster using a soap stone. Next, the driver applied the brakes and the inspector measured the movement of the slack adjuster. Once the measured movements were recorded, the inspector utilized a computer program (Aspen) that required him to input the size of the brake chambers and brake measurements in order to determine whether any brakes were out of adjustment. Employing this technique, the inspector determined that the axle two and axle five brakes were out of adjustment. Further, an additional violation was documented because at least 20 percent of the vehicle's brakes were out of adjustment. (Tr. at 19-24.)

{¶ 12} A key portion of Inspector Lockhart's testimony as to the brake findings related to the identification of the types of brakes that the vehicle employed. The inspector testified that he was confident that the vehicle was equipped with short stroke brakes. This determination was critical to his violation findings, as he admitted that the brakes would have been within acceptable tolerances if they were, in fact, long stroke brakes (Tr. at 25). His determination that the brakes were short stroke, rather than long stroke, was based on his professional training and his prior experience as a truck driver. In terms of the objective criteria he uses to determine whether brakes are short stroke, he described that he (1) looks for a tag on the chamber by the intake hose, (2) assesses whether the chamber is square or round, and (3) evaluates the distance between the brake's clamps. (Tr. at 20-21.) Inspector Lockhart admitted that (1) he did not take any pictures of the brakes for verification purposes, and (2) he did not employ the use of a handheld tool that was in his vehicle that he described as a "Chamber Mate," which would have conclusively verified whether the brakes were, in fact, short stroke. He testified that inspection protocols do not provide for taking photographs of brakes to document brake sizing and that he declined to employ the Chamber Mate, which could have objectively tested the brake function within a reasonable amount of time, because he was confident in his visual short stroke assessment. (Tr. at 20-21, 26-27, 30-31.)

{¶ 13} Mr. Moser identified Staff Exhibit 2, which is the Notice of Preliminary Determination (NPD). According to Mr. Moser, the NPD describes a total of \$150 in forfeitures, with \$100 relating to the brake findings and \$50 relating to the flat tire finding. Mr. Moser testified that these forfeiture amounts are consistent with fine schedules and recommended civil penalty procedures adopted by the Commercial Motor Vehicle Alliance, as well as the Commission's rules. (Tr. at 46-48.)

***B. Respondent's Arguments***

{¶ 14} Mr. Woods, who managed the company's response to the inspection, testified on behalf of Respondent. He described his interaction with the vehicle's driver, James Littlejohn, on the date of the inspection, including efforts that were performed by the

driver in the field in order for the vehicle to be legally driven back to the company's repair shop for service. Further, he testified concerning actions taken at the company's repair shop in response to the inspection.

{¶ 15} Relative to the flat tire, Mr. Woods described that the company's procedures require that the tires are inspected by the driver for proper inflation prior to beginning daily operation of any vehicle (Tr. at 35). Further, he disputed the accuracy of the air pressure measurements during the inspection, which he claims were impacted by the driver's (1) lack of familiarity with the tire gauge that he used at the inspector's direction, and (2) physical limitations as to using the gauge on the hard-to-reach tire at issue. (Tr. at 50, 83.) Further, he added that the company has invested over \$15,000 since the time of this inspection in order to equip each of its three trucks with remote sensing tire pressure monitoring systems in order to ensure that tires are improperly inflated during a vehicle's operation. (Tr. at 51, 62.) Ultimately, Mr. Woods urged a finding that either the tire was not under-inflated, or that it became flat due to a circumstance during the day's travels such that the company should not be cited for the violation.

{¶ 16} Relative to the brakes, Mr. Woods testified that the Monroe location where he works has three trucks, each of which are equipped with long stroke brakes (Tr. at 52). Relative to the truck in question, Mr. Woods described that he took over 50 photographs of the truck both upon its arrival at the company's repair shop on the day of the inspection and while it was being serviced by the company on the morning after the inspection. (Tr. at 36-40, 52-53, 55, 83.) According to Mr. Woods, the photographs in Company Exhibit 5 accurately depict the long stroke brake chambers that were on the vehicle when it was inspected (Tr. at 56). Mr. Woods agreed with Inspector Lockhart as to the general visual criteria that one would use to differentiate short versus long stroke brake chambers, including looking for (1) tagging, and (2) square shaped air fitting ports. (Tr. at 52). Mr. Woods then identified the square shaped fitting ports on the vehicle in question, as photographed on the day of the inspection and the following day when the company replaced the brake slack adjusters. (Company Ex. 5; Tr. at 52.) Mr. Woods also described

that the company replaced the slack adjusters in spite of the fact that they were functioning within normal operating limits as tested at that time. (Tr. at 55-56.) Ultimately, Mr. Woods agreed with Staff that the critical determination as to whether the brakes were functioning within acceptable limits was contingent on whether they were, in fact, long stroke brakes. (Tr. at 64.)

**C. *Staff Rebuttal***

{¶ 17} At the close of Mr. Woods' direct testimony, Staff presented an additional exhibit - a driver/vehicle examination report issued by the Florida Highway Patrol - for purposes of demonstrating that some of Respondent's truck fleet does employ short stroke brakes (Staff Ex. 3; Tr. at 65-67). Mr. Woods explained that Respondent is the largest concrete construction company in the country, and that mail for all 12 of the company's U.S. locations is delivered to the company's Monroe, Ohio, mailing address. He clarified that his testimony as to the company's exclusive use of trucks with long stroke brakes was limited to only its location in Monroe, Ohio, which uses three trucks. (Tr. at 66-69.)

**D. *Exhibits***

{¶ 18} Staff admitted three exhibits without objection from Respondent. Respondent admitted seven exhibits, including Company Exhibits 2, 3, 5, 6, and 7, which were admitted over Staff's objections that were based on issues of relevancy, authentication, and lack of foundation. (Tr. at 72-74.)

**VI. COMMISSION CONCLUSION**

{¶ 19} Ohio Adm.Code 4901:2-7-20 requires that Staff, at a hearing, prove the occurrence of a violation by a preponderance of the evidence. Upon reviewing the transcript and accompanying exhibits to this case, the Commission finds that, based on a preponderance of the evidence, Staff has met its burden of proof that Respondent violated the Commission's transportation rules as to 49 C.F.R. 393.75(a)(3), regarding the flat tire. The Commission further finds that, based on a preponderance of the evidence, Staff has not met its burden of proof that Respondent violated the Commission's transportation rules as

to 49 C.F.R. 393.47(e), 393.53(b), and 396.3(a)(1), the alleged violations regarding Respondent's brakes.

{¶ 20} As to the flat tire violation, Inspector Lockhart testified credibly as to his process for testing tire air pressure. This includes physically contacting each tire to feel for any that might require gauge testing. Once a suspected flat tire is detected, Inspector Lockhart then coordinates dual testing with the driver in order to ensure the integrity of the testing. In addition to the inspector's credible account as to his process, we note that Respondent did not produce any contrary witness testimony or documentary evidence from either the driver or Buckeye Tire, the company that delivered roadside air to the vehicle. (Tr. at 61.)

{¶ 21} As to the brake violations, we accept Respondent's claim that the brake chambers at issue in this case were, in fact, long stroke chambers. Witness Woods testified credibly as to the company's immediate actions at preserving evidence, testing, and installing updated slack adjusters as to the brakes at issue. While Inspector Lockhart disputed the authenticity of the photographs of the brake chambers that Mr. Woods purportedly took on the day of the inspection and the following day, the inspector did agree that the photographs in Company Ex. 5 depicted long stroke brakes. (Tr. at 30.) Moreover, Mr. Woods testified that the Monroe location where he works has three trucks in operation, each of which is equipped with long stroke brakes. In addition to finding Mr. Woods to be credible, we note that the field inspection demonstrates limitations as to satisfying the burden of proof in the case. Notably, there are no field photographs of the brake chambers that could have refuted Respondent's testimony as to the brake equipment. Moreover, in spite of the fact that a Chamber Mate could have been efficiently employed to conclusively verify that the brakes were, in fact, short stroke as alleged, no such field testing occurred (Tr. at 21-22, 26-27). Overall, in the face of credible testimony from Respondent as to the equipment used on its trucks and the company's commitment to testing and updating the brakes during the period immediately following the inspection, we conclude that Staff has not met its burden of proof as to the brake inspection issues in this case.

{¶ 22} For the reasons stated above, Staff has demonstrated that Respondent violated 49 C.F.R. 393.75(a)(3) by a preponderance of the evidence. In accordance with the Commission's civil forfeiture authority, we accept the testimony of witness Moser, who described that the flat tire violation is a Group 2 violation, which warrants a civil forfeiture of \$50. Ohio Adm.Code 4901:2-7-21.

{¶ 23} Based on these findings, Respondent is assessed a \$50 forfeiture for violation of 49 C.F.R. 393.75(a)(3) and should pay the forfeiture within 60 days from the date of this Opinion and Order. Payment shall be made by check or money order payable to the "Treasurer, State of Ohio" and mailed or delivered to the Public Utilities Commission of Ohio, Attention: CF Processing, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793. Case number 20-805-TR-CVF and inspection number OH3203300600C should be written on the face of the check or money order.

## VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 24} On January 27, 2020, Inspector Lockhart of the Commission's Transportation Department inspected Respondent's vehicle and issued citations for violations of 49 C.F.R. 393.75(a)(3), 393.47(e), 393.53(b), and 396.3(a)(1).

{¶ 25} Staff served a notice of preliminary determination upon Respondent in accordance with Ohio Adm.Code 4901:2-7-07.

{¶ 26} During a prehearing settlement conference on June 18, 2020, the parties were unable to reach a settlement.

{¶ 27} An evidentiary hearing was held on June 29, 2021.

{¶ 28} Ohio Adm.Code 4901:2-7-20(A) requires that, at hearing, Staff prove the occurrence of a violation by a preponderance of the evidence.

{¶ 29} Based upon the record in this proceeding, the Commission finds that Staff has proven, by a preponderance of the evidence, that Respondent violated 49 C.F.R.



393.75(a)(3) (tire flat). The Commission further finds that Staff has not proven, by a preponderance of the evidence, that Respondent violated 49 C.F.R 393.47(e), 393.53(b), and 396.3(a)(1).

{¶ 30} Respondent should be assessed a \$50 forfeiture for the proven violation, and it shall pay the forfeiture within 60 days from the date of this Opinion and Order.

### VIII. ORDER

{¶ 31} It is, therefore,

{¶ 32} ORDERED, That Respondent pay a civil forfeiture of \$50 for violating 49 C.F.R. 393.75(a)(3) within 60 days of this Opinion and Order. Payment shall be made via the Commission website or by check or money order payable to the “Treasurer, State of Ohio” and mailed to PUCO Finance, 180 East Broad Street, 4th Floor, Columbus, Ohio 43215-3793. In order to assure proper credit, Respondent is directed to write case number 20-805-TR-CVF on the face the check or money order. It is, further,

{¶ 33} ORDERED, That a copy of this Opinion and Order be served upon each party of record.

COMMISSIONERS:

*Approving:*

Jenifer French, Chair  
M. Beth Trombold  
Lawrence K. Friedeman  
Daniel R. Conway  
Dennis P. Deters

MLW/hac

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**9/23/2021 2:54:59 PM**

**in**

**Case No(s). 20-0805-TR-CVF**

Summary: Opinion & Order finding that Staff has demonstrated, in part, by a preponderance of the evidence, that Respondent Baker Equipment and Materials, Ltd. violated the Commission's transportation regulations electronically filed by Heather A. Chilcote on behalf of Public Utilities Commission of Ohio